IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 24868 of 2000

Between:

A.Lokender Reddy S/o Late Rama Reddy
R/o Plot No.31 SBH.Officer Colony, Near Srinagar Colony Hyderabad
(Rep by his GPA Parvin K Dedhia S/o Khimji Dedhia 47 Yrs R/o Hyderabad)

..... PETITIONER

AND

1 MCH Rep by its Commissioner
TankBund Road, Hyderabad.
2 The Chief City Planner, (MCH)
Circle No.3 At Abids, Hyderabad.
3 The Asst.City Town Planner ,(MCH)
Circle No-3 at Abids , Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Pleased to issue a writ of Mandamus or any other appropriate writ or writs, order or direction, declaring the action of the respondents in demanding security deposit to consider revised building application dated 10-8-1999 for construction of building in the premises bearing No.3-5-907/3 to 9 and 908, situated at Himayathnagar, Hyderabad, as illegal and arbitrary, by directing the respondents to forthwith consider the application of the petitioner without insisting for any other security deposit further orders as are deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. E.MADAN MOHAN RAO

Counsel for the Respondents : GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.24868 OF 2000

ORDER :

This writ petition is filed seeking a declaration that the action of the respondent in demanding security deposit to consider the revised building application of the petitioner dated 10-08-1999 for construction of the building in the premises bearing No.3-5-907/3 to 9 and 908 situated at Himayatnagar, Hyderabad as arbitrary and illegal.

The petitioner claims to be the absolute owner and possessor of the premises in question. It is stated that he made an application on 28-7-1998 by paying the requisite fee seeking permission for construction of a new building. In pursuance thereof, the petitioner was asked to pay a total sum of Rs.1,52,330/- towards developmental charges and other charges. The petitioner paid the same and the permission was granted on 5-2-1999 vide Permit No.101/56 for construction of cellar for parking, stilt + upper four floors. The said permit was valid for a period of three

years. The petitioner states that subsequently he made another application dated 10-8-1999 in continuation of the original application dated 28-7-1998 seeking revision of the plans. In response to the same, the second respondent has demanded further payment of Rs.2,72,551/- on account of difference in development charges, betterment charges and etc. Aggrieved by the said action, this writ petition is filed contending that there is no valid reason for demanding the said amount since the petitioner is only seeking the revision of the building plans already sanctioned.

A perusal of the impugned proceedings dated 19-6-2000 shows that the petitioner was asked to pay a total sum of Rs.2,72,551/- towards difference of building permit fee, difference of developmental charges, difference of external betterment charges, difference of betterment charges and security deposit. The security deposit alone was shown as Rs.2,33,800/-.

The contention of the petitioner is that the action of the respondent in calculating the said sum of Rs.2,33,800/- on the basis of the total floor area as per the revised building plans instead of confining it to the excess area other than the sanctioned area under the Permit No.101/56, dated 5-2-1999 is arbitrary and illegal. The petitioner states that since he has paid a sum of Rs.1,52,330/- as demanded in the respondent's letter dated 2/3-12-1998 whereupon the permission was granted on 5-2-1999 which is valid for a period of three years, the respondents ought to have collected the security deposit only for the excess area as indicated in the revised building plan, but not for the entire area.

On behalf of the respondents, the Assistant City Planner of the Municipal Corporation of Hyderabad filed a counter-affidavit in which it is admitted that the petitioner has paid the amounts as required under the proceedings dated 2/3-12-1998 and thereafter the Corporation issued permission for construction vide permit No.101/56. However, while considering the revised plans dated 10-8-1999 submitted by the petitioner, the respondent Corporation issued the impugned proceedings requiring the petitioner to pay sum of Rs.2,33,800/- towards the security deposit in terms of G.O.Ms.No.423, M.A., dated 31-7-1998. It is stated that by the time the revised proposal was made on 10-8-1999, G.O.Ms.No.423, dated 31-7-

1998 has come into operation under which it is necessary to pay the security deposit in cash or Bank Guarantee or F.D.R. pledged with the local body at the rates specified thereunder in case of all building applications in Plots about 300 sq. mts. and the said security deposit will be refunded by the local authority on production of occupancy certificate issued by the concerned local authority. Hence, the impugned proceedings have been rightly issued requiring the petitioner to pay a sum of Rs.2,33,800/- towards security deposit.

I have heard the learned Counsel for both the parties and perused the material on record.

Admittedly, the petitioner was already granted permission for the construction of Residential / Commercial Complex vide proceedings dated 2/3-12-1998 and consequently Permit No.101/56 of 1999, dated 5-2-1999 was issued. It is not in dispute that he has remitted the requisite fee and charges as required by the respondent Corporation while granting the said permit. However, subsequently the petitioner submitted revised plans on 10-8-1999 for the proposed commercial complex.

G.O.Ms.No.423 was issued on 31-7-1998 thereby rationalizing the Floor Area Ratio (FAR) Values and Standards of the building requirements for different types of buildings, uses and occupancies in Municipal Corporations and Urban Development Authority Areas. As per Clause–11 of G.O.Ms.No.423, dated 31-7-1998 Security Deposit Charges as specified thereunder shall be payable in case of all building applications of apartments / group housing / institutional and commercial buildings in plots above 300 sq. mts. and the same will be refunded by the Local Authority on production of Occupancy Certificate issued by the concerned Local Authority. On the basis of the said clause under G.O.Ms.No.423, dated 31-7-1998 the respondent Corporation while sanctioning revised plans submitted by the petitioner directed him to pay a sum of Rs.2,33,800/- towards security deposit. It is true that G.O.Ms.No.423, dated 31-7-1998 came into operation with effect from 1-8-1998 and by the date of the petitioner's revised application it was in force. However, admittedly the petitioner was already granted permission in respect of the same

premises and it is not in dispute that he has paid the necessary fee and charges as required by the Corporation as per the law existing as on that date. If that be so, the petitioner shall be made liable to pay the security deposit in terms of G.O.Ms.No.423, dated 31-7-1998 only towards the excess area other than the sanctioned area under Permit No.156, dated 5-2-1999. The insistence of the respondent for payment of security deposit for the entire area merely on the ground that the revised plans were submitted after 1-8-1998 does not appear to have any rationale. Either the recitals in G.O.Ms.No.423 or the stand taken in the counter-affidavit of the respondent do not justify the impugned demand of security deposit for the entire area.

The learned Counsel for the petitioner states that in compliance with the interim directions granted by this Court, the petitioner has paid the security deposit as stipulated under G.O.Ms.No.423, dated 31-7-1998 for the extent of construction proposed under the revised plan i.e., in excess of permitted area under the Permit No.156, dated 5-2-1999. In addition to that, he has also furnished the security for the difference between security deposit demanded by the respondent and that has been paid by the petitioner and in pursuance thereof revised plans were sanctioned and the petitioner has already completed the constructions.

In the circumstances, the Writ Petition is allowed declaring the action of the respondents in demanding security deposit for the entire area while considering the revised application of the petitioner is unjustified and unwarranted. Consequently, the respondents are directed to return the security furnished by the petitioner in terms of the interim directions of this Court within a period of four weeks from the date of receipt of this order.

Accordingly, the Writ Petition is allowed. No costs.

20th June, 2005.

gbs

To

1 The Commissioner, MCH, Tank Bund Road, Hyderabad.
2 The Chief City Planner, (MCH)

Circle No.3 At Abids, Hyderabad.

3 The Asst.City Town Planner ,(MCH)
Circle No-3 at Abids , Hyderabad.

4. Two CCs to G.P. for Municipal Admn. & Urban Development, High Court of AP Bldgs, Hyderabad (OUT)

5. Two CD copies.